

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 01: 06-mc-00046 PTS

The SCO Group, Inc.,)
)
Plaintiff,)
)
v.)
)
International Business Machines Corp.,)
)
Defendant.)
)

MOTION FOR LEAVE TO FILE DECLARATION

Otis L. Wilson, through undersigned counsel, hereby moves for leave to file the attached declaration of Todd Shaughnessy in connection with the motions presently pending before this court with respect to the proposed second deposition of Mr. Wilson. The grounds for this motion are as follows:

1. SCO Group, Inc. filed a Motion to Compel accompanied by an Affidavit of Edward Normand, setting forth his recollection of a conference call with the Magistrate Judge in the Utah Action to which Mr. Wilson is not a party.
2. SCO Group sought expedited briefing of that motion.
3. Mr. Wilson's memorandum in response to the Motion to Compel advised the Court that IBM's counsel of record, Todd Shaughnessy had a different recollection of the proceedings before the Magistrate judge in the Utah District, that Mr. Shaughnessy was out of the country, precluding obtaining an affidavit from him within the expedited briefing schedule requested by SCO Group and that Mr. Wilson would request permission to subsequently file an

affidavit by Mr. Shaughnessy if the court deemed the recollection of counsel about the conference call to be important in the resolution of this issue.

4. SCO Group subsequently filed additional papers late in the evening of April 25 that once again relied heavily on the recollection of SCO Group's counsel about the conference call.

5. Mr. Shaughnessy has now returned to the country and has executed the attached declaration setting forth his differing recollection of the disputed conference call with the Magistrate judge and other matters responsive to points made by SCO Group.

6. To the extent, if any, that leave of court is required for filing the Shaughnessy declaration, the Court should grant such leave in the interest of the fair and efficient administration of justice. The declaration was not available when Mr. Wilson's initial papers were file solely because of the expedited briefing schedule sought by SCO Group.

This the 28 day of April, 2006.

/s/Michael T. Medford
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CERTIFICATE OF SERVICE

This is to certify that a copy of the *Motion For Leave to File Declaration* was duly served this date on counsel for all parties by electronic means if available or otherwise by forwarding a copy thereof enclosed in a postage-paid envelope, deposited in the United States Mail, addressed as follows:

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This the 28 day of April, 2006.

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